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ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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March 27, 2000

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BY FACSIMILE

The Honorable Jacob J. Lew
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Director Lew:

Thank you for the Office of Management and Budget's (OMB's) letter of March 24, 2000 responding to my letter of March 2nd concerning the Office of Information and Regulatory Affairs' (OIRA's) administration of the Paperwork Reduction Act (PRA). Although OIRA Administrator John Spotila's March 24th letter repeatedly professes respect for my Subcommittee's oversight responsibilities, OMB just as repeatedly rejects my longstanding request to implement simple accountability measures -- a common-sense monitoring system without which neither my Subcommittee nor any other outside observer can properly oversee OIRA's administration of the PRA.

In numerous letters to you, going back as far as June 9, 1999, I have asked OMB to keep track, as of July 1, 1999, of OIRA's contributions to paperwork reduction, recording instances where OIRA made substantive changes in agency information collection requests (e.g., deleted questions, reduced frequency of reporting, introduced sampling vs. universe reporting, introduced a threshold to exempt small entities from reporting, etc.) and all additional paperwork reduction candidates independently identified by OMB. OMB has stubbornly refused to keep such records, leaving Congress and the public in the dark about OIRA's efforts to reduce paperwork burdens on taxpayers. Mr. Spotila explains, "As we have stated in our prior letters, it is our view that a substantive change is 'made by OMB' only when OMB exercises its authority to disapprove a collection or when an agency withdraws a collection during our review." Whether or not that is, in fact, OMB's view, it is clearly wrong.

Imagine the editorial department of a major publishing house claiming, "It is our view that a substantive change is made by the editorial department only when the department exercises its authority to disapprove a manuscript or when an author withdraws a manuscript during our review." Under such a bizarre definition, editorial supervision that results in an author making substantial revisions, including deletion of whole chapters, would not qualify as a "substantive

change." An "editorial department" that did not work with authors to revise their manuscripts, viewing such changes as less than "substantive," would not deserve its title. Similarly, an editorial department that flatly and repeatedly refused to keep records documenting its work with authors might have a tough time convincing top management or shareholders that it did not deserve a budget cut, if not outright termination.

Mr. Spotila also contends, "At no time during the PRA's entire history have OIRA staff been required to form judgments about which agency -- the collecting agency or OMB -- should be given 'credit' for each paperwork reduction. Doing so would take away from the success of their efforts." If the first sentence just quoted is correct, that may partly explain why paperwork burdens have continued to rise in each of the last few years, even though the PRA mandates that such burdens should fall. Giving credit where credit is due is a great motivator of human effort and initiative. Conversely, administrative systems that do not clearly assign credit for success or failure destroy accountability and stifle achievement. I daresay that if OIRA earned a \$1,000 supplemental appropriation for every million hours of paperwork reduction it achieved, OIRA would have no trouble keeping track of its contributions to the PRA process, and no reluctance to claim "credit" for paperwork reduction accomplishments.

Summarizing OMB's position, Mr. Spotila writes, "Essentially, OMB has never believed that our goal of reducing the Federal Government's paperwork burden would be advanced by having OIRA staff make case-by-case determinations about whether OMB, or the collecting agency, should be given 'credit' for a particular paperwork reduction." To the contrary, the Clinton-Gore Administration's record of non-achievement in reducing paperwork burdens is strong evidence that OMB's failure to assign "credit" has produced a system of non-accountability, which is failing taxpayers and the regulated public. Such case-by-case determinations are the only way for OMB (and Congress) to know who in the paperwork reduction process is doing what. It is the only way OMB (and Congress) can hold OIRA and the agencies accountable and, thus, to motivate real paperwork reduction accomplishments on behalf of America's beleaguered taxpayers.

OMB further writes, "In response to your second question [actual substantive changes made by OMB during the 10/1/99-12/31/99 quarter], we enclose a listing of the collections of information that OMB disapproved during the fourth quarter of 1999 and those that were withdrawn by the agency." OMB's listing of 39 PRA docket worksheets shows an astounding lack of OMB quality control. Indeed, 15 on their face clearly have no substantive changes made by OMB, including:

- 11 Department of Veterans Affairs (DVA) reinstatement requests (this paperwork is probably still in use in violation of the PRA) that were withdrawn by DVA because DVA had failed to publish the legally-required PRA notice in the Federal Register;

- two agency requests that were categorized as "withdrawn" due to OMB clerical errors (one was approved by OMB under a different OMB PRA number and one was "accidentally entered into the system" by OMB);
- one that was withdrawn "to allow OMB to review the final version of the survey in a full and complete manner;" and
- one that was submitted too early by the agency and will be resubmitted with the NPRM.

In fact, in the six-month period, only three of the 39 (or 8 percent) show terms of clearance with any OMB substantive input, including two disapprovals and one new agency request for emergency consideration.

Only after I warned of legal consequences, stating:

If we do not receive the requested items, we will invoke 2 U.S.C. §192. Under that section, any person who "willfully makes default" when asked in the course of a Congressional investigation to "produce papers" or "answer any question pertinent to the question under inquiry, **shall be deemed guilty** of a misdemeanor" (emphasis added),

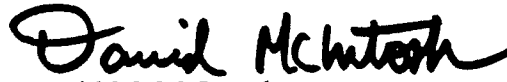
did OMB finally provide readily available information. OMB states, "We regret not having supplied it to you earlier." Incredibly, OMB states that providing basic accountability measures for OMB's PRA performance "would impair our administration of the PRA" and "would impair our ability to serve the public." OMB provides no evidence for these bizarre and inflammatory statements. In fact, I explained in my March 2nd letter how easy it would be for OMB to record basic information.

Finally, in my March 2nd letter, I requested OMB to deliver its statutorily-required annual PRA report to my Subcommittee at least one week before my April 12th hearing. On Friday afternoon, I learned that OMB is unable to assure me that it will be able to meet this deadline. As a consequence, please deliver to my Subcommittee a set of the agency Information Collection Budget (ICB) PRA submissions, which were due to OMB on December 17, 1999.

Please hand-deliver the ICB submissions to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Friday, March 31, 2000. If you have any questions about this

request, please call Professional Staff Member Barbara Kahlow or Subcommittee Staff Director Marlo Lewis on 225-4407. Thank you for your attention to this request.

Sincerely,

A handwritten signature in black ink that reads "David McIntosh". The signature is fluid and cursive, with the first name "David" and last name "McIntosh" clearly legible.

David M. McIntosh

Chairman

Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Dennis Kucinich
The Honorable Jim Kolbe

The Honorable George V. Voinovich
The Honorable Ben Nighthorse Campbell